1956

The Strength of Ten: Three-Quarters of a Century of Purity in Election Finance

Jo Desha Lucas

The Strength of Ten: Three-Quarters of a Century of Purity in Election Finance

By Jo Desha Lucas*

IT IS a favorite statement of campaign orators, especially on the eve of elections, that the franchise is part of the priceless heritage of democratic peoples. As if in an effort to lend validity to this aphorism democracies since the time of ancient Greece have wrestled with the problem of maintaining honest elections.[1] It has not been an easy task. The outcome of elections is often a matter of tremendous importance to the candidates and their backers and, unregenerate as it may sound, there are those who have a price. The task is made more difficult by the fact that election offenses frequently involve persons of great political power who are ever difficult to bring to their knees. This difficulty is compounded by the facility with which honest members of the same political stamp manage to convince themselves that accusations are slanders published by the opposition for partisan advantage.

Historical Note

The history of corrupt practices acts and campaign expenditure publicity legislation is one which has often been told and therefore will be touched upon but lightly here.[2] Bribery was a crime at common law, and prior to the American Revolution it had been firmly established that in casting his vote each citizen discharges a public function the corruption of which through the payment of money constitutes bribery.[3] The constitutions of a number of

* Associate Professor of Law, University of Chicago. Research Ass't, University of Virginia, Bureau of Public Administration, 1948-51. B.A., Syracuse Univ., 1947, M.P.A., 1951; LL.B., Univ. of Virginia, 1951; LL.M., Columbia Univ., 1952.

1. OVERACKER, MONEY IN ELECTIONS 5-19 (1932) (hereinafter cited as OVERACKER). The author relates instances in which a majority of Athenian citizens seem to have been bribed. The Romans, too, permitted candidates to cut some fancy didoes. Instances are related in which candidates invested huge sums in facilities for entertaining the electorate and launched spectacles which make the most flamboyant clambakes in American political history pale into insignificance.

2. The years between 1926 and 1932 brought a rash of books on the subject. In addition to OVERACKER, there were: BELMONT, RETURN TO SECRET PARTY FUNDS (1927); POLLOCK, PARTY CAMPAIGN FUNDS (1926) (hereinafter cited as POLLOCK); ROCCA, CORRUPT PRACTICES LEGISLATION (1928); SIKES, STATE AND FEDERAL CORRUPT PRACTICES LEGISLATION (1928) (hereinafter cited as SIKES). Campaign funds has also been a popular topic for articles. The Readers' Guide to Periodical Literature lists 275 articles on this subject since the campaign fund publicity law drive was launched in 1904. It is interesting to note that the number of such articles tends to reach its peak during years of Republican incumbency. During the twelve year period covered by the Harding, Coolidge, and Hoover presidential terms, the rate was approximately six a year. During the twenty Democratic years which followed, the rate was one and one-half. Production has reached a new high since the Republicans returned to the White House in 1952. The rate since that time has been over seventeen per year, and the year 1956 alone saw forty such publications.

3. Rex v. Pitt, 3 Burr. 1335, 96 Eng. Rep. 214 (K.B. 1762). See Perkins, SAMP-

American states deal directly with bribery at elections, typically providing that offenders shall be disqualified from holding office;[4] and every state in the union has enacted general legislation prohibiting election bribery in its crudest forms.[5] Nor were our forbears insensitive enough to be misled by informalities of payment. Treating, as well as the bald purchase of votes, was very early the subject of restrictive legislation.[6]

The technique of listing all legitimate expenditures and declaring all others to be illegal was an innovation of the early nineteenth century. In 1829, the New York legislature adopted an act which made it a misdemeanor to make a political contribution for any election purpose other than defraying the expenses of printing and circulating ballots, handbills, and other papers previous to an election.[7] The obvious advantage of the act was that it was more difficult for politicians to evade than were laws containing positive proscriptions. Despite this advantage, the act was out of tune with the felt necessities of election finance, and it was virtually nullified by the New York courts in 1858.[8] The device, however, has become standard.[9]

Other sporadic efforts were made during the next decades to strike at election abuses as they became manifest. The assessment of public officers was prohibited by New York and Pennsylvania in

LING THE EVOLUTION OF SOCIAL ENGINEERING, 17 U. OF PITT. L. REV. 362, 370 (1956). See also Commonwealth v. Shaver, 3 W. & S. 338, 341 (Pa. 1842).

4. See SIKES 10-13. Seventeen state constitutions provide that persons found guilty of bribery at elections shall be disqualified from holding office; twelve provide that persons convicted of bribery at elections shall be disqualified from holding office, voting, and serving on juries; and nineteen provide that such persons shall be disqualified from voting.

5. *Id.* at 258-63.

6. The Virginia House of Burgesses in 1699 enacted the following provision:

> And be it further enacted by the authority foresaid, and it is hereby enacted, That no person or persons hereafter to be elected as a burgess shall directly or indirectly by any ways or means at his or their proper charge before his or their election give, present or allow, to any person or persons having voice or vote in such election any money, meat, drink or provision, or make any present, gift, reward or entertainment or any promise, engagement or obligation to give or allow any money, meat, drink or provision, present, reward or entertainment in order to procure the vote or votes of such person or persons for his or their election to be a burgess or burgesses, and every person or persons soe giving, presenting or allowing, making, promising or engaging any money, meat, drink or provision in order to procure such election being elected shall be disabled and incapable to sit and act as burgess in that assembly, but that such election shall be void to all intents and purposes as if the said returns or elections had never been made. 3 LAWS OF VIRGINIA 173 (Hening 1699).

7. N.Y. Sess. Laws 1829, c. 373. See SIKES 120-213.

8. Hurley v. Van Wagner, 28 Barb. 109 (N.Y. 1858). The *Hurley* case nullified, without expressly overruling, Jackson v. Walker, 5 Hill 27 (N.Y. 1843), which had held that chapter 373 of the statutes of 1829 meant what it said and in effect made illegal any election contribution not sanctioned in that chapter.

9. In 1950, twenty-nine states used this device. See Bottomley, *Corrupt Practices*, 30 B.U.L. REV. 331, 350-51 (1950).

1883,[10] and by Massachusetts in the following year.[11] It was the New York act of 1890, however, that served as the model for the legislation of all but four American states.[12] That act for the first time provided that candidates must file statements of their receipts and expenditures.[13] The act was applicable only to candidates and, as a consequence, instead of making campaign expenditures a matter of public notice and public record, it merely insured the appointment of political committees. The chief importance of the act is the fact that its passage began a series of efforts which by 1905 had resulted in the adoption of publicity requirements in fourteen states.[14]

While this slow progress was being made in the United States, Great Britain, unhampered by federalism, moved much more rapidly. Parliament enacted the Corrupt and Illegal Practices Prevention Act in 1883.[15] This statute, relating to parliamentary elections, was certainly the most detailed and comprehensive legislative effort to regulate election corruption which had ever been made.[16]

In organization, the act followed a simple plan. Election offenses were classified into three groups: (1) corrupt practices,[17] (2) illegal practices,[18] and (3) illegal payments.[19] The first classification, corrupt practices, included bribery, treating and undue influence, personation, and aiding and abetting. The second classification, illegal practices, included paying or contracting for payment for conveyance of electors to and from the polls, for use of premises for posting of bills, etc., or for the hire of more committee rooms than the number permitted by the schedule in the statute, and spending or incurring expenses in excess of the maximum set out in the statute. Voting by prohibited persons and the publishing of false statements of withdrawal were also made illegal practices. The third category, illegal payment, employment, or hiring, included the following actions: knowingly providing money for a

10. N.Y. Sess. Laws 1883, c. 354, § 11; Pa. Sess. Laws 1883, No. 89, § 1.
11. Mass. Acts 1884, c. 320, §§ 6, 7.
12. N.Y. Sess. Laws 1890, c. 94.
13. It was apparently patterned after the English Corrupt and Illegal Practices Prevention Act of 1883, 46 & 47 VICT., c. 51. This origin of the idea is denied by Perry Belmont, who states that the New York law was an American invention. BELMONT, RETURN TO SECRET PARTY FUNDS 26 (1927).
14. In addition, five states (Kansas, Nevada, North Carolina, Ohio, and Utah) had enacted similar legislation and repealed it. Since that time all five have reenacted their statutes in one form or another.
15. See note 13 *supra.*
16. Its length and detail were a subject of some criticism in this country, and doubts were expressed that in its entirety it could be adapted to American political conditions. See Belmont, *Publicity of Election Expenditures,* S. Doc. No. 89, 59th Cong., 1st Sess. (1906). See also, SIKES 123-25.
17. 46 & 47 VICT., c. 51, §§ 1-6.
18. *Id.* §§ 7-11.
19. *Id.* §§ 13-21.

payment contrary to the provisions of the act, or for expenses incurred in excess of any maximum amount provided in the act, and employment of cabs, etc., for the transportation of voters to the polls.[20]

There are detailed sections dealing with penalties. Personation and aiding or abetting personation are made felonies;[21] other corrupt practices are made misdemeanors.[22] Penalties for conviction of illegal practices and illegal payments include fines and civil disqualifications.[23]

The act limits expenditures;[24] and also provides for the centralization of responsibility for election finance management through the appointment of election agents by the candidate and the channeling of expenditures through such agents.[25]

It is generally conceded that the British experiment worked. Addressing the Academy of Arts, Science, and Letters in Wisconsin in 1894, Charles Noble Gregory quotes the editor of *Century Magazine* as stating that the English act of 1883 was "so completely successful from the moment of its application to an election that it abolished corruption and bribery at one blow." Dean Gregory continued to say that in the first election to which the act was applied expenses declined by over seventy-five per cent and corrupt practice charges from ninety-five to two.[26] The British comment, while somewhat more restrained, conceded the effectiveness of the act, both in terms of reducing corrupt practices and in reducing expenditures.[27]

---

20. The interdictions in this category apply both to letting, lending, and employing, on the one side, and hiring, borrowing, or using, on the other; corrupt withdrawals from candidacy; payments for bands, torches, flags, banners, cockades, ribbons or other marks of distinction; hiring election workers except for the purposes set out in the act; failure to print upon bills and other literature the name and address of the printer and publisher; and the use of committee rooms on premises where alcoholic beverages are sold, or where any refreshment, either food or drink, is sold for consumption on the premises, or in elementary schools. *Ibid.*

21. *Id.* § 6(2).

22. *Id.* § 6(1).

23. *Id.* §§ 4, 5, 6(3), 10, 11, 21.

24. Expenditure ceilings were set out in the first schedule of the act, and exceeding these ceilings was made an illegal practice by § 13.

25. *Id.* §§ 24-32.

26. GREGORY, POLITICAL CORRUPTION AND THE ENGLISH AND AMERICAN LAWS FOR ITS PREVENTION 272-73 (1895). In explaining the act's success, Gregory said:

> It is addressed to men's interest, to their fear and to their consciences. It compels integrity in elections by loss of political rights, by severe criminal penalties, and by further exposure of the offender's name to public obloquy, and it searches his conscience and that of his agent by the most exact statements made under oath and accompanied by vouchers. It deserves to be effective and it has been so. *Ibid.*

27. For example:

> It has been asserted that this statute, by the multiplicity of the offences which it has created, the acts which it has prohibited, and the complexity of its requirements, has provided such a series of pitfalls that the most wary candidate and cautious election agent can scarcely avoid some inadvertent in-

The Polemic Pattern Sets

After the presidential election of 1904, a widely spread and highly organized campaign was begun to support the adoption of campaign fund publicity legislation at both federal and state levels. This campaign owed much of its force to the efforts of Mr. Perry Belmont of New York. Toward the close of the 1904 campaign Alton B. Parker, the Democratic candidate, made the charge that the Republicans had been the beneficiaries of large corporate contributions which were in essence payments for governmental favors.[28] Although the charge was denied, it gave a great deal of impetus to the publicity law campaign. Nevertheless, had it not been for Mr. Belmont's belief in publicity as a solution, the public indignation resulting from the Parker charges might have spent itself in a drive for prohibition of corporate contributions.[29]

Although the English Act of 1883 and some American legislation prior to 1904 had contained provisions dealing with publicizing campaign contributions, as well as limiting their size and preventing specific abuses, the publicity law advocates insisted that theirs was a fresh approach. Either as a matter of doctrine, or as a matter of tactics, publicity laws were presented to the public as something distinct from corrupt practices legislation. The New York law of 1890,[30] it was insisted, was no offspring of the English act of 1883, but a true innovation in the art of government.[31] The English act was said to rest on the use of penal sanctions to prevent excessive spending in pursuit of public office, while the New York act was bottomed on the proposition that the corrective for corrupt solicitations and donations lies in the fear of negative reaction by an informed voting public.[32]

From the beginning there was a reaction against the English legislation.[33] At first this hostility resulted from the feeling that

---

fringement of its enactments. Though there may be some truth in such criticism the legislation has undoubtedly proved extremely beneficial in reducing the former deplorable prevalence of corruption and excessive expenditure at Parliamentary elections. 70 J.C.P. 2 (1906).

28. OVERACKER 234-35.

29. *Ibid.*

30. See note 12 *supra.*

31. See note 13 *supra.*

32. BELMONT, RETURN TO SECRET PARTY FUNDS 129 (1927), quoting from Belmont, *Publicity of Election Expenditures,* S. Doc. No. 89, 59th Cong., 1st Sess. (1906):

> In 1892, Michigan enacted a much more elaborate statute, making provision not only that campaign committees should report their receipts and expenditures, and regulating the details of the accounts of such committees, but that all expenditures on behalf of candidates, with few exceptions, must be made through the party committees. Proper provisions were also made for the enforcement of the act.

33. "This law went further in the direction of the English Corrupt Practices Act of 1883 than any of the other statutes above mentioned. Owing to conditions incident to our political system, and particularly in view of the number of candi-

since publicity laws are unique, it would confuse the issue to combine them with a larger complex of corrupt practices laws.[34] Later opposition shifted to the position that penal statutes which attempt to regulate in detail and limit the expenditures of candidates actually subvert the publicity laws without achieving any semblance of control over election finance.[35]

Recurrent Voices

Along these precise lines the controversy has raged until this day. On one side are those who have placed their faith in publicity and voter reaction to correct abuses in election finance. On the other, there are those who believe in restrictive legislation to curb spending—apparently they have a greater faith in the ingenuity of lawmakers. As is usual with these bipolar arguments, there is a middle position: that major emphasis should be put on publicity as a corrective, but that at least certain of the restrictions as to the source and amount of contributions and expenditures should be retained.

It has been pointed out that the period between 1926 and 1932 saw the production of a large number of works on corrupt practices and publicity law legislation.[36] It is interesting to identify in these comments the policy positions set out in the preceding paragraph, to compare the positions taken with current writing on the subject, and to see to what extent the same positions can be seen in the behavior of the state legislatures.

By the late nineteen twenties, all states save four[37] had adopted some legislation purporting to regulate campaign expenditures. The federal government had similar legislation in its statute books since 1910.[38] In 1921, the Supreme Court of the United States had declared unconstitutional the federal legislation insofar as it sought to regulate the conduct of primary elections held prior to the adoption of the seventeenth amendment;[39] and there was considerable difference of opinion as to the authority of the federal government to regulate primaries held after the adoption of the amendment.[40] This decision led to a sharp renewal of interest in corrupt

dates voted for at the same time and on the same ticket, it is impossible to follow closely the English law." *Ibid.*

"The Michigan law which has been referred to as comparatively deficient and ineffective, was repealed in 1901." *Id.* at 132.

34. "A publicity law undoubtedly assists in the effective operation of the corrupt practices laws, but is not itself a penal statute. A corrupt practices act is." *Id.* at 24.

35. OVERACKER 343.

36. See note 2 *supra.*

37. Illinois, Mississippi, Rhode Island, and Tennessee. See SIKES 284, Table 6.

38. Act of June 25, 1910, c. 392, 36 STAT. 822.

39. Newberry v. United States, 256 U.S. 232 (1921).

40. See OVERACKER 242.

practices and publicity legislation, both national and state. In 1925, Congress had repealed the acts of 1910 and 1911,[41] and reenacted them without the portions deemed offensive by the Court.[42]

It was in this context of renewed interest that *Party Campaign Funds*,[43] *Money in Elections*,[44] and *Corrupt Practice Legislation*[45] were written. Each of these works attempts to collect the experience of the past, evaluate it in the light of present conditions, and make recommendations for future conduct. The proposed solutions will be examined in the same order in which the 1904 argument was framed.

The first work, Pollock's *Party Campaign Funds*, takes the orthodox publicity law position:

> If the limiting provisions actually limited the amount of money which might be expended, they could be defended. But it is almost the universal opinion of politicians and officials that such provisions do not have any effect upon restraining political expenditures. . . . Legal limitations on the amount contributed, or prohibitions against the acceptance of contributions from certain persons, are quite futile. The escape from abuses along these lines lies through a system of publicity which will keep the people informed as to what the party treasurers are doing.[46]

Professor Sikes' book, *Corrupt Practices Legislation*, lies at the other pole of the argument. Commenting on recent legislation on the subject, he expresses the opinion that the limitation approach is the most practical means of controlling campaign expenditures. He further indicates that only individual contributions should be permitted, and that a ceiling on their amount should be imposed. All contributions, he felt, should be made to the responsible agent of the candidate; candidates should be held responsible for expenditures made upon their behalf, whether they know about them or not; and penalties should consist of both fines and imprisonment and disqualification to hold office.[47]

The third work examined, *Money in Elections*, represents the middle position. Its author, Professor Overacker, is even stronger than Pollock in her criticism of ceiling limits on expenditures. She indicates that in an attempt to avoid the impact of the ceiling limit, committees burgeon and responsibility for party finances is fractionalized. The result is not to restrict campaign expenditures,

41. These were the provisions dealing with primary elections.
42. Federal Corrupt Practices Act, 43 STAT. 1070 (1925), 2 U.S.C. § 241 (1952).
43. POLLOCK, PARTY CAMPAIGN FUNDS (1926).
44. OVERACKER, MONEY IN ELECTIONS (1932).
45. SIKES, CORRUPT PRACTICES LEGISLATION (1928).
46. POLLOCK 248.
47. SIKES 251-52.

but to undermine the publicity laws.[48] She further suggests that the real danger lies not in oversupport of one candidate but in undersupport of candidates who cannot call upon the services of one of the major party organizations. The corrective, she believes, is some form of state aid to candidates. The author is not so distrustful of regulations of contributions. She suggests that in the interest of stockholders, the prohibition of corporate political expenditures should be retained.[49]

Against this spectrum of opinion of some twenty-five years ago, we turn to the more recent comment on the subject. Three articles have been chosen for purposes of comparison. The first of these is written by Robert A. Bicks and Howard I. Friedman.[50] Although the article deals directly with the Federal Corrupt Practices Act,[51] the opinions with regard to the efficacy of control methods and a desirable pattern for the future are expressed in sufficiently general terms so that they apply to the efforts of the states as well. Bicks and Friedman suggest, as did Overacker in 1932,[52] that the ceiling limit on expenditures be repealed.[53] They also go further and suggest that the limitation on the contributions of corporations is unenforceable, while the limitations on contributions by labor unions are only partially effective. Because of this discrepancy, labor unions are now placed at a disadvantage and, therefore, both prohibitions should be repealed.[54] Conceding the desirability of regulating certain uses of money in elections, such as bribing and treating, the authors suggest that not only are ceiling limitation statutes unlikely to be effective, and not only do they interfere with the probabilities that publicity legislation will be effective, but also that they actually hamper the growth of what the writers call "issue politics."

The second work, an unsigned note in the *Harvard Law Review*,[55] concedes the importance of publicity provisions, makes suggestions for the improvement of their administration, but adds: "Publicity alone does not solve the problem of vast sums spent in elections and the inequality in resources of the major parties."[56] The writer agrees with the critics of present day legislation who maintain

48. OVERACKER 385.
49. *Id.* at 388.
50. Bicks and Friedman, *Regulation of Election Finance: A Case of Misguided Morality*, 28 N.Y.U.L. REV. 975 (1953).
51. 43 STAT. 1070 (1925), 2 U.S.C. § 241 (1952). The article also deals with the Hatch Political Activity Act, 62 STAT. 720 (1948), 18 U.S.C. § 591 (1952), and the Taft-Hartley Act, 61 STAT. 159 (1947), as amended, 18 U.S.C. § 610 (1952).
52. OVERACKER 385.
53. Bicks and Friedman, *supra* note 51, at 998.
54. *Id.* at 999.
55. 66 HARV. L. REV. 1259 (1953).
56. *Ibid.*

that low ceilings have made enforcement impossible and that lack of enforcement has the unfortunate result of fractionalizing party administration and defeating the ends of the publicity sections. He suggests, however, that if ceilings were raised to realistic figures, the laws could be made to work.[57]

The third work, also an unsigned note, is a critique of the Minnesota law which provides, among other things, that only $7,000 can be spent by a candidate for governor, or in his behalf.[58] Candidates for other offices may spend between $100 (candidate for presidential elector from any congressional district) and $3,500 (state offices other than that of governor).[59] The writer notes that as a result of restrictive court decisions and inadequate enforcement machinery, the Minnesota statute has been largely ineffectual in limiting expenditures.[60] He goes on to say that the low expenditure limits have provided candidates with a choice between running a dispirited campaign or violating the law. The writer concludes that not only are the present limits unrealistic but in the nature of things there is no sufficiently scientific basis for determining the proper limits to justify the imposition of any limit at all.[61]

The suggested alternative is that of Belmont,[62] and of Pollock,[63] and Overacker.[64] In support of this recommendation attention is called to the experience in Florida after the legislature repealed the ceiling provisions of the law. The Florida experiment is described as a notable success and Minnesota is exhorted to follow the good example.[65]

Recent Legislation

Where the advice from scholars and men of affairs has been so consistent over so long a period, it is to be expected that legislation will follow along the lines which they have marked out. This is exactly what has happened. This process of groping for solutions can be illustrated by a comparison of the legislation in two sister states, Maine and New Hampshire.

57. *Ibid.*
58. Note, *Minnesota Corrupt Practices Act,* 40 MINN. L. REV. 156 (1955).
59. MINN. STAT. § 211.06 (1953).
60. Note, *Minnesota Corrupt Practices Act,* 40 MINN. L. REV. 156, 158 (1955).
61 *Id.* at 159.
62. See note 32 *supra.*
63. POLLOCK 248.
64. OVERACKER 338.
65. Note, *Minnesota Corrupt Practices Act,* 40 MINN. L. REV. 156, 167 (1955): ". . . [T]his new law has resulted in accurate and comprehensive financial information. Candidates closely watched their opponent's financial reports to uncover violations of the law; thus a type of 'self-policing' has resulted from this statute which forces disclosure of pertinent financial information."

Both had adopted campaign fund publicity legislation in the early part of the twentieth century.[66] Both had also adopted statutes specifying legitimate expenditures,[67] and placing ceiling limits on campaign expenditures.[68] In both cases, the arrival of the late nineteen twenties found these limits unchanged since their adoption and so low as to be unrealistic. In Maine, the legislation applied only to primary elections and the limit upon the expenditures of a candidate for nomination for governor was $1,500.[69] In New Hampshire the provision applied to both primary and general elections and in both instances the limit was $1,000.[70] In both cases expenditures permitted candidates for other offices were proportionately low.[71]

In 1927, New Hampshire raised the ceiling on expenditures in primaries from $1,000 to $8,000, but left unchanged the $1,000 limit on expenditures in the general election.[72] In 1947, the limit on expenditures in general elections was raised from $1,000 to $3,000.[73] In 1955, when the election code was extensively revised, these limits were raised from $8,000 in the primary and $3,000 in the general election to $25,000 and $20,000.[74] The limit imposed upon the spending of state committees remained the same until 1955, when it was raised from $25,000 to $100,000.[75] In the same year a limit of $5,000 was placed on individual contributions, except contributions by a candidate to his own campaign fund.[76] The 1955 revision also provides for a measure of centralization of responsibility in the management of campaign funds in that candidates are required to appoint a fiscal agent who shall approve all disbursements made on behalf of a candidate for nomination at any primary election.[77] Political committees are defined and it is provided that those spending over $200 must file financial state-

66. Me. Laws 1916, c. 7, § 17; N.H. Laws 1911, c. 101, §§ 2-8.
67. Me. Laws 1916, c. 7, § 128; N.H. Laws 1915, c. 169, §§ 4, 5.
68. Me. Laws 1916, c. 6, § 21; N.H. Laws 1915, c. 169, § 2.
69. Me. Laws 1916, c. 6.
70. N.H. Laws 1915, c. 169, § 2.
71. The $1,500 limitations in Maine applied to all officers elected on a state-wide basis, candidates for the United States Senate included. Candidates for the United States House of Representatives were allowed $500; candidates for the state senate and county officers were allowed $150 per each 10,000 votes cast for governor within the county during the last gubernatorial election. Candidates for the state legislature from districts with three or more representatives were allowed $150; others, $50. Me. Laws 1916, c. 7, § 21. The $1,000 limitation in New Hampshire applied to candidates for governor and United States Senator. The limit applicable to general elections, in the case of a candidate for the United States House of Representatives, was $750; councilor, $250; state senator or county officer, $150; and representative of the General Court, $50. N.H. Laws 1915, c. 169, § 4.
72. N.H. Laws 1927, c. 137, § 3.
73. N.H. Laws 1947, c. 205, § 3.
74. N.H. Rev. Laws c. 70, § 4(I & II) (Supp. 1955).
75. *Id.* § 4.
76. *Id.* § 2.
77. *Id.* § 12.

ments;[78] in addition, there is a provision that no "payment or contribution of money or thing of value, whether tangible or intangible, shall be made to a candidate, a political committee, or political party or in behalf of a candidate, political party, or measure, directly or indirectly, for the purpose of promoting the success or defeat of any candidate, political party, or measure . . . if made without the knowledge and written consent of the candidate or his fiscal agent, a political committee or its treasurer, or to any one of the same."[79] It is explicitly provided that expenditures made by political committees or by others are to be included in computing the total expenditures for the application of the ceiling provisions.[80]

In Maine, the ceiling placed upon expenditures in primaries remained the same from 1913, the year in which it was first enacted, until 1931.[81] At that time the section was simply repealed and since 1931 Maine has placed no limits on political expenditures or on political contributions, nor is there any regulation of source of contributions.[82] In lieu of such regulations, Maine has relied wholly on publicity, strengthened by provisions seeking to promote centralization of responsibility in election finance.[83] In 1953, provision was also made for a biennial legislative committee to investigate the expenditures made on behalf of candidates for nomination for office throughout the state.[84] In 1955, the legislature repealed the provision prohibiting persons other than the candidate from making any contribution to any person other than to a treasurer or political agent within six months of any election,[85] and deleted the provision permitting a candidate to act as his own political agent.[86]

Other states which have enacted recent legislation on the subject have abolished limits,[87] raised limits,[88] changed the formula used in computing limits,[89] changed enforcement provisions,[90] broad-

78. *Id.* §§ 8, 9.
79. *Id.* § 2.
80. *Id.* § 4.
81. Me. Laws 1916, c. 7, § 17.
82. ME. REV. STAT. c. 9 (1954).
83. ME. REV. STAT. c. 9, § 2 (Supp. 1955).
84. ME. REV. STAT. c. 4, § 44 (1954).
85. ME. REV. STAT. c. 9, § 3 (Supp. 1955).
86. *Id.* § 2.
87. *E.g.*, California in 1949, Cal. Stat. 1949, c. 192, § 1; North Carolina in 1951, N.C. GEN. STAT. § 163.196 (1952).
88. *E.g.*, Alabama, from $10,000 to $50,000 for candidates for governor and senator, ALA. CODE tit. 17, § 272 (Supp. 1955); New Mexico primary expenditures from $2,500 to $5,000 in the case of candidates for nomination for governor and from $3,500 to $7,000 in the case of candidates for nomination for United States Senator, N.M. STAT. ANN. § 3-11-60 (Supp. 1955); New York from $10,000 to $20,000, N.Y. ELECTION LAW § 781(1) (Supp. 1956); Virginia from fifteen cents per vote cast for the candidate of his party receiving the largest vote in the last preceding gubernatorial election to fifty cents, VA. CODE § 24-402 (Supp. 1956).
89. *E.g.*, Mo. ANN. STAT. § 129.100 (Vernon Supp. 1956) provides that cam-

ened coverage,[91] narrowed coverage,[92] and they have rewritten acts with no substantial changes.[93]

This groping for solutions can be illustrated equally well by a review of the legislation in a single state over the course of the past four decades. The legislative history of the Florida act is a case in point. The basic primary election law of Florida was enacted in 1897[94] and 1913.[95] Like most such laws it provided that candidates must file under oath a statement of campaign expenditures. Failure to file the required statement resulted in disqualification; and any election official who issued to a non-complying candidate a certificate of election or nomination, or placed his name on the ballot in the general election, was subject to fine and imprisonment.[96] The law also limited the legal objectives of expenditures to those set out in the act, and all expenditures for other objectives were made punishable by fine and imprisonment.[97] Total expenditures were limited to amounts set out in the statute, ranging from $4,000 in the case of a candidate for governor or United States Senator to $100 in that of a candidate for a place on the county executive committee of a political party.[98] Expenditures in excess of these amounts were punishable by fine and imprisonment.[99] In 1927, when the corrupt practices acts were being brought under

paign expenditures may not exceed $4 per 100 votes cast in the last preceding election for the same office. Formerly § 129.100 provided a flat limit of $200 where fewer than 5,000 votes were cast in the previous election for the same office, $4 per 100 votes for the next 20,000 votes, $2 per vote for the next 25,000, and $1 per vote for all in excess of 50,000.

90. *E.g.*, WIS. STAT. § 12.22 (1955), in part, provides:

(1) If any elector of the State shall have within his possession information that any provision of this chapter, has been violated by any candidate for which such elector had the right to vote, or by any personal campaign committee of such candidate, or any member thereof, he may, by verified petition, apply to the county judge of the county in which such violation has occurred, to the attorney general of the state, or to the governor of the state, for leave to bring a special proceeding to investigate and determine whether or not there has been such violation by such candidate or by any such committee or member thereof, and for the appointment of special counsel to conduct such proceeding in behalf of the state.

(2) If there shall appear from such petition or otherwise that such candidate, committee or member thereof has violated any provision of this chapter, and that sufficient evidence is obtainable to show that there is probable cause to believe that such proceeding may be successfully maintained, then such judge or attorney general or governor, as the case may be, shall grant leave to bring such proceeding and shall appoint special counsel to conduct such proceeding.

. . . .

In subsequent sections, provision is made for serving of process, trial, judgment, and appeal. The penalty provided is forfeiture of office.

91. *E.g.*, CONN. GEN. STAT. tit. XI, c. 62(b)(1955).
92. MASS. ANN. LAWS c. 55, § 4 (Supp. 1955).
93. Conn. Spec. Laws 1953, c. 368.
94. Fla. Laws 1897, c. 4538, §§ 1, 2.
95. Fla. Laws 1913, c. 6470.
96. *Id.* §§ 19, 20.
97. FLA. STAT. ANN. § 99.172 (Supp. 1955).
98. Fla. Laws 1913, c. 6470, § 2.
99. *Id.* § 4.

new attacks as being unrealistic, Florida acted to increase her maximum expenditure schedule from a top of $4,000 to $15,000, with corresponding increases down the line.[100]

Until 1949, the law remained virtually unchanged. However, some effort was made to keep abreast of technological improvements; thus, the provision in the laws of 1941 added to the list of legitimate expenses the hire of radio time and public address equipment.[101] Prior to this amendment, the statute mentioned only expenditures for hiring of halls.[102]

In 1949, Florida, like Maine, acted to abolish ceiling limits on expenditures. The act, which took effect without the approval of the governor, further provided that "all such candidates shall file under oath complete and true statements of the actual sums expended in the furtherance of their candidacy."[103] These simple provisions remained to be expanded and implemented by subsequent legislation, and although Florida has not re-enacted a ceiling on expenditures, she has experimented with other methods of holding down the amount of money expended by candidates for office. The prohibition against corporate contributions was continued[104] and other groups, including holders of racing permits, users of public utility franchises, and holders of alcoholic beverage licenses, whether corporate or not, were included in the category of persons who were prohibited from making political contributions.[105] Individuals permitted to make contributions were limited to a maximum of $1,000 in the interest of any one candidate, at any election, primary or general.[106]

In an effort to make this section effective and to aid in the enforcement of the reporting and publicity sections, provision was made for the complete centralization of collection and disbursement of campaign funds. Each candidate must appoint a campaign treasurer and designate a depository for campaign funds. The campaign treasurer may then appoint deputy treasurers and other depositories may be named. However, all contributions must be made to the campaign treasurer or to his deputies, including contributions by the candidate on his own behalf and contributions by members of the candidate's family, and all expenditures must be made or approved by the campaign treasurer.[107]

In 1955, state and county committees were brought under the

100. FLA. STAT. ANN. § 102.62 (Supp. 1955).
101. *Id.* § 102.61.
102. Fla. Laws 1913, c. 6470, § 1.
103. Fla. Laws 1949, c. 25273, § 1.
104. FLA. STAT. ANN. § 104.091 (Supp. 1955).
105. Fla. Laws 1951, c. 26819, § 2.
106. FLA. STAT. ANN. § 99.161(1)(a) (Supp. 1955).
107. *Id.* § 99.161(2).

reporting requirement,[108] and provision was made that any elector having information of any violation of the prohibition against the making of campaign contributions by corporations, racing permit holders, liquor licensees, and public utilities may file a complaint. The appropriate agency must then investigate the complaint and refer its findings of fact to the state's attorney for filing of a petition and pleadings in the circuit court in the appropriate county.[109]

Looking Toward the Future

At this point it may be asked why we are thinking the same thoughts and saying the same things about election finance and its regulation that we were thinking and saying half a century ago and repeating twenty-five years later. Why are we enacting, amending, and repealing the same sort of legislation which we were enacting, amending, and repealing at the turn of the century? One partial answer may lie in the circumstance that the Republicans occupy the White House; the Democrats are on the outside searching for issues which will aid them in 1960 and which, in the interim, will reassure them that their cause is righteous. The first fervor over campaign finance regulation followed Judge Parker's charges that large contributions to the Republican campaign fund in the election of 1904 were made with the expectation of payment in political favors;[110] and, although care was taken to preserve the non-partisan character of the publicity legislation drive, the issue has always been one which has appealed more to Democrats, characterizing themselves, as they do, as the representatives of the less wealthy elements of the community. Mr. Perry Belmont's pamphlet on campaign fund regulation issued in 1912 was signed "not in my capacity as president of the Publicity Law Association but in my individual capacity, and as a Democrat."[111] The second period of high interest in election finance came toward the close of the twelve years of Republican incumbency between 1920 and 1932.

Undoubtedly the change in character and cost of campaign technique, first felt in the campaign of 1952 and refined in 1956, will have the effect of heightening interest in the problem. The television campaign which President Eisenhower liked to refer to as bringing the Republican message to the people was characterized by Democrats as an attempt to sell a presidential candidate like soap. The protest against this new, costly, and apparently effective cam-

108. *Id.* § 99.161(1)-(13).
109. *Id.* § 104.27(9).
110. OVERACKER 234-35.
111. BELMONT, RETURN TO SECRET PARTY FUNDS 3 (1927).

paign medium was also expressed in the steady Democratic criticism of "Madison Avenue."

Certainly, however, these fortuities of political posture do not constitute a satisfactory explanation for our fiftly years of fumbling in the area of campaign finance regulation. The problem cuts much deeper. It touches upon people's fundamental attitudes toward democratic government. If Americans were universally willing to accept Professor Overacker's concept of democracy as a peaceful means of rendering to effective majorities that which in any event they could have seized,[112] it is doubtful that we should have spent so much time and effort on trying to regulate political spending. This view of Democracy is too lacking in idealism to be popular. Americans would prefer to think of their form of government as an institution which arrives at answers to public questions which represent the distilled wisdom of the electorate solemnly rendered after rational discussion and sober thought.

It is recognized, of course, that to avoid coercion the secrecy of elections must be maintained; and that if the secrecy of elections is to be maintained, no effort can be made to judge the logic of the individual voter's decision. A vote is a vote, whether it represents a carefully thought out position on foreign policy or farm policy, or whether it reflects the fact that the voter is attracted by the personality of the candidate. The suggestion, however, that the voter should be motivated by personal financial considerations is odious to the popular concept of Democracy. It could be said, of course, that most voting reflects the voter's judgment as to what will be best for the voter, rather than his decision as to what is best "for the country." And it may even be that this is desirable because, inasmuch as each voter is an expert at all, he is an expert on his own best interests. It could be said, therefore, that the essence of democratic government lies in the fact that each voter expresses his judgment as to what is best for him and that the total decision represents at least what is best for a majority. Where the voter votes his judgment as to what is "best for the country," a matter on which he may have but vague notions, and these erroneous, it is easy to imagine situations in which no interests at all are given honest expression. Nevertheless, Americans are normally reluctant to think in these terms. We generally prefer to rationalize personal interest voting by identifying our individual interests with the national interest.

This American dislike of admitting the legitimacy of personal interest as a motive for voting is very old. In refusing to enforce

112. OVERACKER 2-4.

an obligation arising out of a wager on the outcome of a presidential election, the Supreme Court of South Carolina said in 1830:

> . . . [B]ut I take the general principle [to be] that the wager *must be innocent, and have no improper tendency, however remote.* Can that be said in the present case? It gives each bettor a pecuniary, and therefore improper, interest in the election, or defeat, of a presidental candidate. It is true, that neither of the parties had a voice in it;[113] but the country has a deep interest in preserving the purity of this election and whatever gives a citizen an improper motive to promote, or obstruct the elevation of a candidate, tends to affect the purity.[114]

Given this conception of purity, it becomes the function of the state to create conditions in which impure motives are least likely to flourish, and thus we have attempted to outlaw all forms of bribery, whether direct efforts to persuade the voter with promise of gain through a job or a political favor, or simply entertaining him in the hope that he will show the proper gratitude. In doing this we have followed a long American tradition that what is impure, "there oughta be a law against." The British act of 1883 prohibited expenditures for music, torches, flags, banners, cockades, ribbons, or other marks of distinction; and under this clause Mr. F. James of Walsall was unseated upon proof that his political agent had furnished six thousand cards with his picture to the electorate, to be placed in the hat and inscribed, "Vote for James, we're bound to win."[115] By contrast, an investigation of election expense statements in Maine in 1929 revealed that one prominent candidate had put down, "$50 for ice cream for the people at a picnic," in happy ignorance that there was anything amiss in this expenditure.[116] Americans like picnics and they like pagentry. They dislike impurity, however, and improper tendencies, however remote, and feel that there should be laws against them, so long as in their operation these laws do not actually curb the picnics and the pagentry.

The legislation regulating the level of expenditures reflects this same feeling that the law should forbid that which has a tendency toward corruption, so long as it does not interfere with the traditional splendor of elections. In some ways the case for limitation of campaign contributions is more in keeping with democratic principles than regulations designed to control the motives of the voters. Whatever might be said about the propriety of personal

113. This case was decided before the popular vote had become as influential as it now is in the election of the President.
114. Laval v. Myers, 1 Bailey 486, 491 (S.C. 1830).
115. GREGORY, *op. cit. supra* note 26, at 271.
116. HORMELL, CORRUPT PRACTICES LEGISLATION IN MAINE AND HOW IT WORKS (1929).

motivations of individual voters, it may be conceded that officials elected by the people have a duty to serve all the people and that conditions which make for the election of officials financially beholden to a small group of large campaign contributors tend to subvert this concept of even-handed administration of public affairs.

Though easier to reconcile with democratic doctrine, the regulation of amount has been much more difficult than the regulation of purpose. The American pattern of electing everybody from the President to the members of the municipal bench, often at the same election, involving a vast congeries of supporter groups organized on local, state, and national levels, and working for candidates in all combinations, makes it next to impossible to keep track of finances. The Gore Committee, investigating the finances in the 1956 presidential election, estimated that the cost of the election would really never be known because of the existence of hundreds of committees active in the support of both the presidential ticket and local candidates. More important, perhaps, is the fact that since the cost of elections has been rising at a phenomenal rate, ceilings on expenditures become unrealistic in a very short while. It is estimated that the presidential campaign of 1956 cost in the neighborhood of $100,000,000.[117] But the aggregate cost of elections held at the same time is problematical. There is no reason to believe that as the population increases the cost of campaigning will not continue to rise. The only way in which limits can be seriously considered is in the context of a conscious desire to change the type of political campaign waged in American politics. This may conceivably take place in some localities and we can look forward to a continued experimentation with ceiling limits coupled with provisions seeking to fix responsibility for expenditures. That it will become a national phenomenon, however, may well be doubted.

Attempts to limit contributions rather than expenditures have been less common but can be expected to be used more frequently. They strike at large donations on the theory that it is unhealthy for a candidate to draw his financial backing from a few wealthy donors, thus entering public office indebted to these persons for his election. In theory such provisions force the candidate to aim at a broader base of contributions if he is to raise enough money to support the rising cost of campaigning. It is interesting to note that this legislation seems to be on the rise at a time when it is also popular to amend the provisions regulating illegal contributions to bring within the prohibited classes contributions made by labor unions, apparently on the theory that the pressure for the

117. N.Y. Times, Nov. 6, 1956, p. 40, col. 2.

solicitation of smaller contributions might result in the increase of pressure for institutional assessment.

The most trying problems of election finance, those posed by sharp differences between the resources of the major parties, remain virtually untouched, though the limitation of individual contributions and prohibition of corporate donations is an oblique approach to the problem. It has been well stated that the most vital problem in financing elections is the one of insuring adequate financing of both sides, rather than limiting the amount which either side is permitted to spend.[118] No state has as yet experimented with campaign expense subsidies, at least in recent years,[119] and the federal government has shown no inclination to lead the way. However, suggestions along such lines as franking privileges for candidates and free time requirements attached to television and radio licenses are occasionally seen in commentaries.

To close with a prediction, it seems likely to the present writer that we shall continue to fumble with ceiling limits, with regulation of source of contributions, with oaths of compliance, and with legislative investigations, complete with long reports. There will be occasional repeal of limitations on expenditures and there will be a continued effort to strengthen reporting features in the present legislation. There will be a slow shift to control of contributions. There will be the usual efforts to keep limits in realistic ranges, with the usual lag. There will also undoubtedly be enough violation of all these provisions to keep us equipped with the sort of election carnivals to which we are accustomed. Americans simply do not want to abandon the cards in the hat, nor television, nor parades. Finally, we shall continue to feel strongly opposed to improper motives and even traces of impurity, obligated to have statutes outlawing all such evils, and worried because they do not seem to work.

118. OVERACKER 381.

119. Colorado conducted such an experiment in 1909. Colo. Sess. Laws 1909, c. 141. The statute was declared unconstitutional in 1910. People *ex rel.* Bradley v. Galligan and Kenehan, unreported opinion decided Oct. 10, 1910, cited in OVERACKER 318. The act was repealed by Colo. Sess. Laws 1921, c. 63.